

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

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| ELECTRONICALLY<br>FILED<br>Oct 17 2017<br>U.S. DISTRICT COURT<br>Northern District of WV |
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**JOHN G. CARPTENTER, JR.**

**Plaintiff,**

**JODIE HOWELL, M.D.; and  
CLAY BATTELLE HEALTH SERVICES  
ASSOCIATION,**

**Defendants.**

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**Civil Action No. 1:17-CV-176 (Keeley)  
(Removal of 17-C-347 from the  
Circuit Court of Monongalia  
County, West Virginia)**

**NOTICE OF REMOVAL**

The United States of America, by William J. Powell, United States Attorney for the Northern District of West Virginia, and Erin Carter Tison, Assistant United States Attorney for said District, hereby respectfully files this Notice of Removal based upon the following:

1. Clay Battelle Health Services Association and Jodie Howell, M.D., are defendants in Civil Action No. 17-C-347 now pending in the Circuit Court of Monongalia County, West Virginia. Civil Action No. 17-C-347 was commenced against said Defendants, and others, by the filing of Plaintiffs' Complaint on or about September 6, 2017. (A copy of the Summons and Complaint are attached hereto as Exhibit 1).

2. At the time of the incidents alleged in the Complaint, Dr. Howell was an employee of Clay Battelle Health Services Association, which was an entity receiving federal grant money from the United States Public Health Service pursuant to 42 U.S.C. §§ 254b or 254c. Pursuant to 42 U.S.C. §§ 233(g) and (h), the United States Department of Health and Human Services (HHS) deemed Clay Battelle Health Services Association and its employees eligible for malpractice coverage under the Federal Tort Claims Act (FTCA). (A copy of the deeming letters of is attached hereto as Exhibit 2.)

3. The Attorney General, by the United States Attorney for the Northern District of West Virginia, has certified, pursuant to 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d), that Jodie Howell, M.D. was acting within the scope of her employment at the time of the incidents alleged in the complaint, and that, pursuant to 42 U.S.C. §§ 233(g) and (h), Jodie Howell, M.D. and Clay Battelle Health Services Association are deemed to be employees of the United States for FTCA purposes only for any acts or omissions in connection with their employment that occurred at the time of the conduct alleged in the Complaint. (A copy of the Certification of Scope of Employment as referenced herein is attached as Exhibit 3).

4. Both 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d)(2) provide that upon certification by the Attorney General that a defendant was acting within the scope of employment at the time of the incident out of which the action arose, any civil action or proceeding commenced in a State Court shall be removed without bond at any time before trial by the Attorney General to the District Court of the United States of the district and division embracing the place in which the action or proceeding is pending and, thereafter, that the action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of Title 28, United States Code, and all references thereto. Thus, the requisite certification having been obtained, the removal of this action is ripe.

5. Title 28 U.S.C. § 2679(d)(2) further provides that the Certification of Scope of Employment “shall conclusively establish scope of office or employment for purposes of removal.”

WHEREFORE, this action now pending in the Circuit Court of Monongalia County, West Virginia, is properly removed therefrom to this Court pursuant to Title 28, United States Code, Section 2679(d)(2) and Title 42, United States Code, Section 233(c).

Respectfully submitted,

WILLIAM J. POWELL  
UNITED STATES ATTORNEY

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**CERTIFICATE OF SERVICE**

I Erin Carter Tison, hereby certify that on October 17, 2017, a true and correct copy of the foregoing Notice of Removal has been sent to counsel for Plaintiff by U.S. Mail, addressed as follows:

J. Bryan Edwards  
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By: /s/ Erin Carter Tison  
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